IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

MONDAY, THE 5TH MARCH 2007 / 14TH PHALGUNA 1928

WP(C).No. 4262 of 2007(G)

PETITIONERS:

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1. PATHUMMA, D/O. LATE MUHAMMED,
   ILAMBILASSERY HOUSE, THURAVKAL P.O.,
   MANJERI, MALAPPURAM DISTRICT.

2. SAFIYA, D/O. LATE MUHAMMED,
   ILAMBILASSERY HOUSE, THURAVKAL P.O.,
   MANJERI, MALAPPURAM DISTRICT.

3. SUBAIDA, D/O. LATE MUHAMMED,
   ILAMBILASSERY HOUSE, THURAVKAL P.O.,
   MANJERI, MALAPPURAM DISTRICT.

4. RASIYA, D/O. LATE MUHAMMED,
   ILAMBILASSERY HOUSE, THURAVKAL P.O.,
   MANJERI, MALAPPURAM DISTRICT.

5. ALAVI, S/O. LATE MUHAMMED,
   ILAMBILASSERY HOUSE, THURAVKAL P.O.,
   MANJERI, MALAPPURAM DISTRICT.

6. HAIRUNNEESSA, D/O. LATE MUHAMMED,
   ILAMBILASSERY HOUSE, THURAVKAL P.O.,
   MANJERI, MALAPPURAM DISTRICT.

BY ADV. SRI.K.M.SATHYANATHA MENON

RESPONDENTS:

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1. THE SECRETARY TO GOVERNMENT,
   TOWN PLANNING, LOCAL SELF GOVERNMENT DEPARTMENT,
   SECRETARIAT, TRIVANDRUM.

2. THE CHIEF TOWN PLANNER,
   GOVERNMENT SECRETARIAT, TRIVANDRUM.

3. THE TOWN PLANNING OFFICER,
MALAPPURAM, MALAPPURAM DISTRICT.

4. MANJERI MUNICIPALITY, REPRESENTED BY
ITS SECRETARY, MANJERI MUNICIPALITY BUILDING,
MANJERI, MALAPPURAM DISTRICT.

R1 TO R3 BY ADV. SMT. T.B. RAMANI, GOVT. PLEADER
R4 BY ADV. SRI.M.P.ASHOK KUMAR

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 05/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

PIUS C. KURIAKOSE, J.

W.P.(C) No. 4262 OF 2007

Dated this the 5th day of March, 2007

JUDGMENT

Exts.P4 and P4 (a) orders rejecting applications submitted by the petitioners for construction of a commercial complex is under challenge. In the statement filed by the Municipality through their Standing Counsel, the rejection orders are justified on the ground that the petitioners' properties are earmarked for park and open space under a DTP Scheme known as 'Thurakkal' DTP Scheme. It is seen that the scheme, a copy of which is produced as Ext.P2 was notified way back in 1992 and till date no concrete steps have been taken by the Municipality for implementing the scheme. The issue according to me is covered by the judgment of **Francis V. Chalakkudy Municipality** [1999(3) KLT 560] and also by the judgment of the Division Bench in **Padmini V. State of Kerala** [1999 (3) KLT 465]. The issue is covered also by the judgment of Supreme Court in **Raju Jethmalani & others V.State of Maharashtra & others** [(2005) 11 SCC 222]. The petitioner accordingly is entitled for relief.

Under these circumstances the Writ Petition will stand disposed of with the following directions:

Exts.P4 and P4(a) are quashed. The petitioner is directed to

submit undertaking in the form of an affidavit before the 4th respondent in which it will be stated very clearly that if any notification under Section 4(1) of the Land Acquisition Act is promulgated by the respondents within a period of 15 months from the date of issuance of permit by the Municipality to the petitioners, they will surrender the building to be constructed on the strength of the permit without claiming any compensation for the building. Once the affidavit is received by the Municipality, they will reconsider the application for permit submitted by the petitioners and issue permit provided plans submitted by the petitioners are otherwise in order. In other words, the proposal to acquire the property of the petitioner for implementation of the DTP scheme will not be a reason to reject the application for building permit. It is made clear that even after expiry of the period of 15 months noted above, if it becomes necessary for the respondents to acquire petitioners' property for any genuine public purpose they are free to do so. But under such a contingency, the petitioners will be entitled for adequate compensation under the provisions of Land Acquisition Act.

PIUS C. KURIAKOSE, JUDGE

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